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note to *Barnard v. Shirley*, 41 L. R. A. 737, 749. In *Hill v. Ward*, 7 Ill. 285, interference with a ford formed part of the cause of action, and in *Harmon v. Carter* (Tenn. Ch. App. 1900), 59 S. W. 656, the sole injury complained of was making a ford impassable by water thrown back by a dam. The instant case would seem to give the lower proprietor the right to have the volume of the stream remain constant unless the increase is due to a reasonable exercise of the right of drainage on the part of an upper proprietor, as it does not appear that the stream was raised above its banks on the plaintiffs' land. In its opinion the court pays little attention to the nature of defendant's wrong, but rather lays emphasis on the character of plaintiffs' right. In commenting on one feature of this right, the court said: "The particular right of the plaintiffs alleged to have been breached by defendant is the (un)hindered opportunity to pass from one place to another on their own land. * * * If they own the land under the water (called the ford), they have the right to use it for a passage unobstructed by high waters." If an owner has a right to be free from obstructions passing over the surface of his land from other property, 1 TIFFANY, REAL PROP., § 217, it does not seem unreasonable that he should have the right to be free from obstructions on the surface. This, however, is an unusual way of approaching this class of cases.

WILLS—WHAT CONSTITUTES ACTUAL MILITARY SERVICE UNDER THE ENGLISH WILLS ACT.—At the conclusion of the Waziristan operations on the frontier of India in 1895, a portion of the force remained in the Tochi Valley as an escort to the party engaged in the delimitation of the frontier. The testator was a lieutenant in an Indian regiment forming part of this escort. While so serving he was mortally wounded by a fanatic, and was carried into camp, where he dictated a will to his brother-in-law, whom he made his residuary legatee. The testator died the next day. The will was signed by the testator and attested by his brother-in-law and another officer as witnesses. His estate consisted of personalty only. *Held*, that the testator was in "actual military service," within the meaning of § 2 of the WILLS ACT, 1837, at the time when he made his will. *Limond v. Cunliffe* [1915], 2 Ch. 240.

§ 2 of the WILLS ACT, 1837, provides that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act. The law prior to the Act allowed a soldier to dispose of his personalty by a will, no attestation of which was required at all. 1 SWINBURNE, TESTAMENTS (7th ed.), 94. The same privilege is now allowed them by statute in many of the states in this country. A decision as to what constitutes "actual military service" is at this time peculiarly applicable and interesting under the present war conditions. The court said, "For the purpose of determining whether a soldier is in 'actual military service,' the commencement of the military service is the time when mobilization takes place. It does not cease until the full conclusion of the operations and also extends to those things which are incidental to the war in question." Such was the situation here. The war had ceased, and this soldier was killed while his regiment was serving as an

escort to the party engaged in the delimitation of the frontier. For further cases on the point as to what constitutes the beginning and ending of "actual military service," see *Herbert v. Herbert* (1855), Deane 10; *In re Saunders* (1865), L. R. 1, P. & D. 16; *In re Tweedale* (1874), L. R. 3, P. & D. 204; *In re Hiscock* [1901], Pro. 78; *Gattward v. Knee* [1902], Pro. 99; *Leathers v. Greenacre*, 53 Me. 561; *Gould v. Safford*, 39 Vt. 498. It seems clear that the court is laying the foundation for a number of cases when it decides that even though engaged in something incidental to the war operations, yet a soldier is deemed to be in actual service. The question will naturally arise as to what things are "incidental."

WORKMEN'S COMPENSATION ACT—BASIS OF COMPUTING RECOVERY.—X, a plumber, was called upon by a village marshal to aid in arresting a criminal; as X approached to render assistance, the criminal shot him, causing his death. His wife applied for an award under the WORKMEN'S COMPENSATION LAW, and the Industrial Commission awarded a sum of \$3,000 computed on the basis of X's earnings as a plumber. The Circuit Court held the village liable, but held the award erroneous in that it should have been computed on the earnings of a policeman in the village. This ruling was affirmed by the Supreme Court. *Village of West Salem v. Industrial Commission of Wisconsin* (Wis. 1916), 155 N. W. 929.

The WORKMEN'S COMPENSATION ACT of Wisconsin (Stats. 1913, §§ 2394-10) specifically includes policemen and firemen within the meaning of the term "employees." Town and city marshals are peace officers. *Hayes v. Mitchell*, 69 Ala. 452; *Bryan v. Bates*, 15 Ill. 87. A peace officer has the right to summon and require the assistance of as many bystanders as are necessary to enable him to perform his duty in making the arrest. *Martin v. State*, 89 Ala. 115, 8 So. 23; *Firestone v. Rice*, 71 Mich. 377, 38 N. W. 885; *Patterson v. Kise*, 2 Blackf. (Ind.) 127. When a peace officer orally summons bystanders to assist him in making an arrest for a felony, such persons are given the same protection which surrounds the officer while acting in concert with him and actually engaged in attempting to arrest the offender. *State ex rel. Brown v. Appleby*, 139 Wis. 195, 120 N. W. 861; *McCumber v. Waukesha County*, 91 Wis. 442, 65 N. W. 51. Statutes in all the states that have adopted Compensation Acts contain provisions for calculating the amount of recovery; and further provide that in case the methods stated cannot fairly be applied, the recovery shall be computed on the basis of the average wages of other employees of the same class engaged in the same or similar employment. It seems clear that X was acting as a policeman at the time of the affray, and that the compensation was properly assessed on that basis.